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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re T.M., a Person Coming Under the
Juvenile Court Law.

Y.M.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B292108

(Los Angeles County
Super. Ct. No. CK17874A)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.456.) Akemi Arakaki, Judge. Petition denied.

Law Offices of Vincent W. Davis & Associates and
Stephanie M. Davis for Petitioner.

No appearance for Respondent.

Office of the County Counsel, Mary C. Wickham, County
Counsel, Kristine P. Miles, Assistant County Counsel, and
Veronica Randazzo, Deputy County Counsel for Real Party in
Interest.

Children's Law Center of Los Angeles - CLCLA 1, Daniel
Szrom and David C. Bell for Minor T.M.

Y.M., the mother of T.M., petitions for extraordinary relief pursuant to California Rules of Court, rule 8.452.¹ She seeks review of an order setting a permanent plan hearing under Welfare and Institutions Code section 366.26.² Y.M. (mother) argues that the juvenile court erred in concluding that the Los Angeles County Department of Children and Family Services (DCFS) provided reasonable reunification services to her because conjoint counseling and visitation in a therapeutic setting were never initiated. We deny the petition.

FACTS AND PROCEDURAL HISTORY

Mother's boyfriend was sentenced to 65 years to life in prison for the severe and repeated sexual abuse of T.M., including rape, sodomy and oral copulation. The abuse came to light two years before the conviction when T.M., then aged 10,

¹ T.M.'s father is not pursuing such a petition.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

told a classmate that her mother's boyfriend had been sexually abusing her for several years. T.M. reported that she told mother about the abuse but mother did not believe her. Police and social workers responded, the boyfriend was arrested, and T.M. was detained from mother.

The detention was approved by the juvenile court on June 14, 2016. T.M. was placed in individual counseling, as was mother, with monitored visitation "3 times a week for 2 hours, limited by the availability of the monitor." Early in the case, mother equivocated on whether she was or was not alerted to the abuse by T.M., or whether she believed T.M. Mother stated that when they confronted the boyfriend he denied the abuse, and T.M. thereupon recanted her allegations. Plus, T.M. had a history of lying about other things, like homework or taking money, which caused mother to doubt her. Alternatively, mother asserted that T.M. had not given her enough information to understand that T.M. was complaining of sexual abuse, as opposed to simple roughhousing. Nevertheless, on August 29, 2016, mother pled no contest to a section 300 petition alleging that mother failed to believe T.M.'s disclosure of sexual abuse and allowed her boyfriend to remain in the home with unlimited access to T.M., constituting failure to protect, sexual abuse and cruelty. Mother agreed to a case plan that encompassed parenting and sexual abuse awareness classes, individual counseling, and conjoint counseling with T.M., though T.M.'s plan only included conjoint counseling if recommended by T.M.'s individual therapist.

Mother's initial visits with T.M. occurred twice a week due to limited availability of monitors. After visits, as well as after telephone contact with mother, T.M. would become agitated and

emotional. She began expressing regret about telling on the boyfriend so as to deprive mother of his company and financial support, even as she dwelled upon the abuse she had experienced. That behavior escalated, even after mother was admonished not to discuss the case with T.M. T.M. had episodes of uncontrolled urinating or defecating on herself while in public due to stress over visits. She reported being puzzled by mother's behavior during visits, such as evading questions, crying, or showering her with gifts. T.M. claimed that mother told her to "shut up" and not say anything about the abuse.

In March 2017, the juvenile court reconsidered the visitation order in the face of competing section 388 petitions filed by mother and by T.M. Mother requested unmonitored visitation, or even return of T.M. to her custody, while T.M. sought to restrict visitation even further in order to protect T.M. from distress following visits. Mother pointed to the results of an independent psychological report, prepared earlier in the case pursuant to Evidence Code section 730, concluding that mother presented no risk to T.M. and was capable of protecting T.M. from any further abuse. T.M. pointed to the fact that her therapist recommended suspending visits altogether due to T.M.'s growing confusion and distress over why mother had left her alone with the boyfriend, which had become so extreme that T.M. exhibited physical symptoms. In fact, T.M. was refusing to visit more than once every other week because she felt manipulated by mother, despite encouragement from DCFS to visit as scheduled. After initially amending the visitation order to twice-weekly visits in a therapeutic setting, the juvenile court found that the child's best interests would be promoted by delaying those visits until approved by T.M.'s therapist. At the

same time, the juvenile court found that reasonable services had been rendered and ordered that they continue. Though the reporter's transcript of the March 2017 hearing is not included in the record, on July 28, 2017, and again on September 20, 2017, the juvenile court stated that in ruling upon the section 388 petitions it had found visits would be detrimental to T.M., and so had delayed implementation of its visitation order until there was evidence T.M. was stable. The court further noted that the therapist was "continually being advised of her obligation to assess the child's ability to psychologically sustain contact with the mother." Mother did not challenge those rulings.

T.M. never became ready for conjoint counseling or visits in a therapeutic setting.³ According to her therapist, T.M. was experiencing flashbacks of the pain caused by the abuse, and expressed distrust of mother for having allowed it. T.M. did not want to see mother at all, becoming sick to her stomach when contemplating visits and exhibiting concerning behaviors such as sleepwalking and yelling in her sleep. Her ability to concentrate in school suffered. From August to November 2017, T.M. had a lapse in her long-term therapy due to administrative concerns.⁴ Once the issue was resolved and T.M. returned to her regular therapist, she had regressed even further, reporting passive

³ There is mention in the record of DCFS's facilitating a few visits outside a therapeutic setting that went well. However, at some point the juvenile court "clarified" that such visits were to follow progress in visits held in a therapeutic setting, and so they were discontinued.

⁴ T.M. had some intake sessions with a new therapist in the interim who noted the severity of T.M.'s symptoms and considered placing T.M. on psychotropic medication.

suicidal ideation and committing self-harm, such as picking her skin raw or pulling her toenails off when thoughts of mother intruded. In a victim impact statement prepared for the boyfriend's sentencing hearing, T.M. described extreme physical and emotional distress, being made to feel as though she was the one who had done something wrong, and fear of being returned to the mother who failed to protect her. The record shows that while DCFS continued to inquire into the possibility of initiating conjoint counseling or visits in a therapeutic setting, by the time of a combined 12- and 18-month status review report, it recommended against returning T.M. to mother due to the continued risk of harm to T.M.

Mother requested a contested hearing. She presented testimony from her own therapist that mother had always believed T.M. about the abuse and the only way to convince T.M. of that was to engage in conjoint counseling. In fact, mother's therapist believed T.M.'s caretaker was alienating T.M. from mother and so recommended removing T.M. from that placement, preferably returning T.M. to mother, and initiating conjoint counseling by force if necessary. In contrast, T.M.'s therapist did not believe conjoint counseling, or reunification of T.M. with mother, was in the child's best interest given T.M.'s disclosures regarding severe sexual abuse at the hands of mother's boyfriend, her distrust of mother's ability to protect her, and her behavioral setbacks in anticipation of and after contact with mother. The social worker testified that she did not recommend reunification because it risked T.M.'s emotional well-being. T.M. did not wish to return to mother, was observed to hide her true emotions from mother, and exhibited extreme distress after visits. At the same time, the social worker noted, mother continued to deny any role

in posing a risk to T.M. and seemed unwilling to acknowledge T.M.'s concerns if they did not comport with mother's beliefs. The social worker denied seeing the caretaker try to alienate T.M. from mother, and reported that T.M. had denied any such conduct.

T.M. wrote a letter to the court indicating that she continued to distrust mother and had no desire to return to mother's custody. She also testified that while she misses mother, she does not want to see mother. She remains uncomfortable with mother's having allowed the abuse—which T.M. now understands was severe—to occur, and not believing her when she first complained. T.M. stated she would be similarly uncomfortable engaging in conjoint counseling sessions with mother, though she allowed that she might be ready for it in the future. T.M. appeared unaware that mother was not allowed to call her or initiate contact outside a therapeutic setting, which may have contributed to her feeling abandoned, but stated that information did not alter her decision regarding reunifying with mother. The sexual abuse was the greater issue to T.M. T.M. further denied there was any effort to alienate her from mother.

For her part, mother testified that she had always believed T.M.'s reports of abuse by the boyfriend, though the first time she received such a report was when T.M.'s school principal called her after T.M. revealed the abuse to a classmate. T.M.'s earlier complaints about the boyfriend had been vague and were retracted upon questioning, so no red flags were raised for mother. She stated that she had repeatedly asked for visits after they were suspended, but the social worker did not respond to her. In the end, mother argued that DCFS had not provided her with reasonable reunification services.

While cognizant of mother's claims, the juvenile court noted that the matter had reached the point of an 18-month review, and so the relevant inquiry was continuing risk to the child of returning her to mother's custody.⁵ (§ 366.22, subd. (a).) In assessing that risk, the court noted the evidence was that T.M. did not feel protected by mother at the time she revealed the abuse and still did not. Meanwhile, mother remained steadfast in her claim that she did not realize T.M. was complaining of sexual abuse until T.M. mentioned it at school. The court concluded that until mother recognized the need to allow T.M. to process what happened, she could not demonstrate substantive progress toward eliminating the issues that led to removal, leaving T.M. at risk and requiring termination of reunification services. As to the adequacy of reunification services with regard to mother, the juvenile court found that adequate, if not stellar, services were provided, allowing mother to complete her case plan with the exception of conjoint counseling. With regard to that element, the court found that given the detriment to T.M., DCFS had acted reasonably in relying on the therapist's expert opinion as to whether it had abated. In any event, the court noted that even if it were to order another six months of reunification services, that was not sufficient time to rehabilitate the parties' relationship. Accordingly, the court terminated reunification services and scheduled a hearing pursuant to section 366.26. This timely petition followed.

DISCUSSION

Mother contends the juvenile court erred in finding that she was provided with adequate reunification services.

⁵ In fact, 26 months had elapsed since detention.

Particularly, she asserts that DCFS unreasonably relied on the opinion of T.M.'s therapist that conjoint therapy or visits in a therapeutic setting would be detrimental to T.M., and so never arranged them. We review the juvenile court's finding for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) That is, the appellate court will not reweigh the evidence or exercise independent judgment, but will view the record in the light most favorable to the juvenile court's order, drawing all reasonable inferences in favor of the ruling. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545; *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) And, in assessing the adequacy of reunification services, the standard is not perfection but whether the services were reasonable in the circumstances. (*In re Misako R., supra*, at p. 547.)

Viewed in accordance with those principles, we find the juvenile court's determination that DCFS provided reasonable services is supported. The record shows that in delaying implementation of conjoint counseling or visitation in a therapeutic setting, DCFS regularly investigated the matter and remained in contact with the parties. However, DCFS was consistently met with information that T.M. remained in extreme distress, communicated not only by T.M.'s therapist but by T.M. and her caregiver. As T.M. processed the magnitude of what had happened to her, flashbacks to the actual abuse and alarm at having been left alone with her abuser invaded T.M.'s thoughts. Though she visited with mother early in the case, T.M.'s anxiety before and after those visits caused her to shrink from further contact and to suffer agonizing physical manifestations of her distress. T.M. was so confused that for a time she wondered

whether she should have subjugated herself to mother's and the boyfriend's interests, and never revealed the abuse. Her ability to sleep and to concentrate at school were affected, and she thought constantly about her mistreatment. Demonstrating her fragility, T.M. regressed even further when, after a year of counseling, administrative misunderstandings required her to briefly change therapists. She began engaging in self-harm and passive suicidal ideation. T.M.'s victim impact statement, composed as late as February 2018, exhibited how raw and unabated her emotions remained. As the juvenile court recognized, in light of that evidence, DCFS's decision to delay conjoint counseling or visitation in accordance with the recommendation of T.M.'s therapist was not unreasonable. Rather, it was in furtherance of the juvenile court's direction that T.M. be protected from detriment.⁶

Mother further makes an oblique attack on the visitation order itself, which she characterizes as improperly delegating to T.M.'s therapist the authority to decide whether visitation would take place. However, mother did not seek review of the order restricting visitation to a therapeutic setting when recommended by T.M.'s therapist at the time that order was made. That was in March 2017, and was confirmed in July and September of the

⁶ DCFS and T.M.'s counsel contend that the adequacy of reunification services need not be addressed at all because after 18 months or more of reunification the reasonableness of services becomes irrelevant. Instead, they argue, the juvenile court's only options are to return a child to his or her parent or to set a section 366.26 hearing. (§ 366.22, subd. (a); § 366.25, subd. (a).) We do not reach that contention because the juvenile court's finding is supported in any event.

same year.⁷ Instead, mother has waited until now to raise her objection, when the statutorily authorized reunification period has not only run but has extended significantly beyond the maximum time frame for providing permanency to T.M. Mother has thereby forfeited her right to challenge the order. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018; *In re Julie M.*, *supra*, 69 Cal.App.4th at p. 47.)

Even so, a review of the record reveals that in the circumstances the juvenile court's visitation order did not improperly delegate authority to T.M.'s therapist. When faced with competing section 388 petitions, supported by competing expert opinions, the juvenile court concluded that contact with mother would not promote T.M.'s best interests; i.e., that it would be detrimental to T.M. Accordingly, the court could have denied visitation altogether, because it is not obligated to require visitation when it would be harmful to the child. (§ 362.1, subd. (a)(1)(B); *In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1102; *In re T.M.* (2016) 4 Cal.App.5th 1214, 1219.) Instead, the juvenile court allowed that once the detriment had dissipated, visitation could re-commence in a therapeutic setting. That did not give T.M.'s therapist unfettered authority to grant or deny visits. Rather, it provided a means by which DCFS could determine whether the ordered visitation would be safe and so should be resumed as directed. (See *In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1358; *In re Moriah T.* (1994) 23 Cal.App.4th

⁷ Nor did mother seek to amend the agreed-upon dispositional order, entered August 29, 2016, that made conjoint counseling on T.M.'s part subject to the recommendation of her therapist.

1367, 1374-1375.) And, as is outlined above, evidence outside the therapist's opinion confirmed that T.M.'s anxiety was real, was damaging and was continuing. The condition set by the juvenile court for re-implementation of its visitation order was never met.

DISPOSITION

The petition for extraordinary relief is denied. The stay of the section 366.26 hearing is lifted. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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_____, P. J.
LUI

We concur:

_____, J.
ASHMANN-GERST

_____, J.
CHAVEZ